UNITED
NATIONS

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Secretariat

ST/AI/371
2 August 1991

ADMINISTRATIVE INSTRUCTION

To: Members of the staff

From: The Under-Secretary-General for Administration and Management

Subject: REVISED DISCIPLINARY MEASURES AND PROCEDURES*

I. PURPOSE

1. The purpose of the present instruction is to provide guidelines and instructions on the application of chapter X of the Staff Rules, Disciplinary Measures and Procedures, and to outline the basic requirements of due process to be afforded a staff member against whom misconduct is alleged. Personnel directive PD/1/76 on disciplinary procedure for staff serving at offices away from Headquarters and Geneva, which addressed some of the matters dealt with in the present instruction, is hereby superseded.

II. INITIAL INVESTIGATION AND FACT-FINDING

2. Where there is reason to believe that a staff member has engaged in unsatisfactory conduct for which a disciplinary measure may be imposed, the head of office or responsible officer shall undertake a preliminary investigation. Misconduct is defined in staff rule 110.1 as "failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other administrative issuances, or to observe the standards of conduct expected of an international civil servant." Conduct for which disciplinary measures may be imposed includes, but is not limited to:

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* Personnel Manual index No. 11075.

(a) Acts or omissions in conflict with the general obligations of staff members set forth in article 1 of the Staff Regulations and the rules and instructions implementing it;

(b) Unlawful acts (e.g. theft, fraud, possession or sale of illegal substances, smuggling) on or off United Nations premises, and whether or not the staff member was officially on duty at the time;

(c) Misrepresentation or false certification in connection with any United Nations claim or benefit, including failure to disclose a fact material to that claim or benefit;

(d) Assault upon, harassment of, or threats to other staff members;

(e) Misuse of United Nations equipment or files, including electronic files;

(f) Misuse of office; abuse of authority; breach of confidentiality; abuse of United Nations privileges and immunities;

(g) Acts or behaviour that would discredit the United Nations.

3. If the preliminary investigation appears to indicate that the report of misconduct is well founded, the head of office or responsible officer should immediately report the matter to the Assistant Secretary-General, Office of Human Resources Management, giving a full account of the facts that are known and attaching documentary evidence, such as cheques, invoices, administrative forms, signed written statements by witnesses or any other document or record relevant to the alleged misconduct.

4. If the conduct appears to be of such a nature and of such gravity that suspension may be warranted, the head of office or responsible official shall make a recommendation to that effect, giving reasons. As a general principle, suspension may be contemplated if the conduct in question might pose a danger to other staff members or to the Organization, or if there is a risk of evidence being destroyed or concealed and if redeployment is not feasible.

5. On the basis of the evidence presented, the Assistant Secretary-General, on behalf of the Secretary-General, shall decide whether the matter should be pursued, and, if so, whether suspension is warranted. Suspension under staff rule 110.2 (a) is normally with pay, unless the Secretary-General decides that exceptional circumstances warrant suspension without pay, in both cases without prejudice to the staff member's rights.

6. If the case is to be pursued, the appropriate official in the administration at headquarters duty stations, and the head of office or mission at duty stations away from headquarters, shall:

(a) Inform the staff member in writing of the allegations and his or her right to respond;

(b) Provide him or her with a copy of the documentary evidence of the alleged misconduct;

(c) Notify the staff member of his or her right to the advice of another staff member or retired staff member to assist in his or her responses; and offer information on how to obtain such assistance.

If the Secretary-General authorizes suspension, the staff member shall be informed of the reason for the suspension and its probable duration and shall surrender his or her grounds pass. A staff member on suspension may not enter United Nations premises without first requesting permission and shall be afforded the opportunity to enter, under escort, if necessary to prepare his or her defence or for any other valid reason.

7. The staff member should be given a specified time to answer the allegations and produce countervailing evidence, if any. The amount of time allowed shall take account of the seriousness and complexity of the matter. If more time is required, it shall be granted upon the staff member's written request for an extension, giving cogent reasons why he or she is unable to comply with the deadline. If no response is submitted within the time-limit, the matter shall nevertheless proceed.

8. The entire dossier is then submitted to the Assistant Secretary-General, Office of Human Resources Management. It shall consist of the documentation listed under subparagraphs 6 (a), (b) and (c) above, the staff member's reply and the evidence, if any, that he or she has produced. In cases arising away from New York, the responsible official shall promptly forward the dossier to the Assistant Secretary-General, Office of Human Resources Management.

9. On the basis of the entire dossier, the Assistant Secretary-General, Office of Human Resources Management, shall proceed as follows:

(a) Decide that the case should be closed, and the staff member should be immediately notified that the charges have been dropped and that no further action will be taken. This is without prejudice, where appropriate, to the measures indicated in staff rule 110.3 (b) (i) and (ii); or

(b) Should the facts appear to indicate that misconduct has occurred, refer the matter to a joint disciplinary committee for advice; or

(c) Should the evidence clearly indicate that misconduct has occurred, and that the seriousness of the misconduct warrants immediate separation from service, recommend to the Secretary-General that the staff member be summarily dismissed. The decision will be taken by or on behalf of the Secretary-General.

III. REFERRAL TO A JOINT DISCIPLINARY COMMITTEE

10. Staff rule 110.4 (b) provides for referral of a case to a joint disciplinary committee for advice as to what disciplinary measures, if any, would be appropriate. If the Assistant Secretary-General for Human Resources Management decides to refer the matter to a joint disciplinary committee, he or she shall so inform the staff member in writing.

11. Referral to a joint disciplinary committee may be waived, by mutual agreement of the staff member concerned and the Secretary-General, under the provisions of staff rule 110.4 (b) (i). A waiver means that the staff member agrees to forego joint disciplinary committee proceedings and to have imposed one or more of the disciplinary measures listed in staff rule 110.3 (a). Either the staff member or the responsible official may propose a waiver. If there is mutual agreement, it shall be recorded in writing. The staff member shall be assisted by counsel, unless he or she has specifically waived the right to counsel.

12. If there is no waiver of referral to the Joint Disciplinary Committee, any case relating to a staff member serving at a duty station where a standing Joint Disciplinary Committee is established shall be referred by the Assistant Secretary-General, Office of Human Resources Management, to that Committee, unless the Secretary-General considers there is a good reason to refer the case to a standing committee at a different duty station or to an ad hoc committee at the same or another duty station.

13. At duty stations that are headquarters to the Economic Commission for Africa, the Economic Commission for Latin America and the Caribbean, the Economic and Social Commission for Asia and the Pacific and the Economic and Social Commission for Western Asia and at Nairobi, a presiding officer shall be designated by the Secretary-General on the proposal of the head of office(s) concerned after consultation with the staff representative body or bodies at the duty station concerned.

14. If a case is referred to an ad hoc committee, such committee shall be constituted as follows:

(a) At duty stations where a presiding officer has been designated, the Presiding Officer will proceed to constitute with maximum dispatch an ad hoc joint disciplinary committee of which he or she, or someone designated by him or her, shall be the chairperson. The Presiding Officer shall select the other two members, one member from a list of at least three names submitted by the head of office and the other member from a list of at least three names nominated by the staff representative body at the duty station;

(b) At all other duty stations, after consulting the staff representative body or bodies concerning the Chairperson of the Ad Hoc Committee, the head of office shall proceed with maximum dispatch to submit his or her proposal to the Secretary-General for the composition of the Committee as follows:

(i) The Chairperson;

(ii) A member to be appointed by the Secretary-General from a list of three staff members nominated by the head of office;

(iii) A member to be appointed by the Secretary-General selected from a list of three staff members nominated by the staff representative body or bodies at the duty station;

(c) In accordance with Staff Rule 110.6 (g), if nominations by staff representative bodies as provided in (a) or (b) are not submitted within a time period set by the Secretary-General, the latter may make appointments after consultation with the staff representative body or bodies.

15. The Assistant Secretary-General for Human Resources Management, or the designated official at Geneva or Vienna, or the head of office or designated official at other duty stations shall:

(a) Transmit to the staff member the entire dossier submitted to the Joint Disciplinary Committee;

(b) Advise the staff member of his or her right to be represented by any serving or retired staff member at the same duty station where the Joint Disciplinary Committee is established.

In addition, in those cases where an ad hoc joint disciplinary committee has been constituted, he or she shall:

(a) Inform the staff member of the composition of the Committee;

(b) Advise the staff member of his or her right:

(i) To submit any written observations or explanations to the Joint Disciplinary Committee within a specified time; and

(ii) To suggest other persons of whom inquiry might be made and to request that hearings be held and witnesses called. The Joint Disciplinary Committee, at its sole discretion, shall decide if these suggestions or requests are warranted.

16. Staff rule 110.7 provides that:

"(a) In considering a case, the Joint Disciplinary Committee shall act with maximum dispatch and shall make every effort to provide its advice to the Secretary-General within four weeks after the case has been submitted to it.

"(b) Proceedings before a Joint Disciplinary Committee shall normally be limited to the original written presentation of the case, together with statements and rebuttals, which may be made orally or in

writing, but without delay. If the Committee considers that it requires the testimony of the staff member concerned or of other witnesses, it may, at its sole discretion, obtain such testimony by written deposition, by personal appearance before the Committee, before one of its members or before another staff member acting as a special master, 1/ or by telephone or other means of communication."

17. The proceedings of the Joint Disciplinary Committee and its rules of procedures shall be consistent with due process, the fundamental requirements of which are that the staff member concerned has the right to know the allegations against him or her; the right to see or hear the evidence against him or her; the right to rebut the allegations and the right to present countervailing evidence and any mitigating factors. If the Committee decides to hear oral testimony, both parties and counsel should be invited to be present, and no witnesses should be present during the testimony of other witnesses. If the Chairperson decides that the Committee or one of its members should take testimony by deposition, telephone, or other means of communication, such testimony shall be shared with the parties concerned for comment or rebuttal.

18. The Chairperson shall declare the opening and closing of the meeting; direct the discussion; enforce time-limits; accord the right to speak; rule on points of order; rule on relevance; and be responsible for the timely completion of the report.

19. The Chairperson shall direct that all persons involved in Joint Disciplinary Committee proceedings, whether as members, parties, counsel or witnesses, observe strict confidentiality. Normally only members, the Secretary, parties and counsel shall be present during hearings, the exception being a witness giving oral testimony. Executive sessions, attended by all members and the Secretary, may be convened by the Chairperson at any time.

20. The report of the Joint Disciplinary Committee should contain:

(a) The allegations of misconduct;

(b) The staff member's response;

(c) A statement of the proceedings;

(d) A synopsis of the evidence and the Committee's evaluation thereof;

(e) The findings, indicating which of the allegations, if any, appear to be supported by the evidence;

(f) Any aggravating or mitigating factors that might be relevant;

(g) The advice of the Joint Disciplinary Committee to the Secretary-General as to what sanction, if any, should be applied;

(h) Dissenting or separate opinion, if any.

21. The report should be transmitted with maximum dispatch to the Secretary-General through the Under-Secretary-General for Administration and Management.

22. The final decision shall be taken by or on behalf of the Secretary-General.

23. If there is an appeal in respect of a disciplinary measure imposed after consideration by a joint disciplinary committee, it shall be submitted directly to the United Nations Administrative Tribunal.

24. A staff member who is summarily dismissed under the terms of staff regulation 10.2, second paragraph, and staff rule 110.4 (b) (ii) may, within two months after having received written notification, submit a request that the measure be reviewed by a joint disciplinary committee. Such request shall be submitted to the Joint Disciplinary Committee in New York.

25. Neither a request for review under 110.4 (b) (ii) nor an appeal to the United Nations Administrative Tribunal against a disciplinary measure shall have the effect of suspending the measure.

Notes

1/ A special master is any staff member designated by the Committee to act on its behalf for this purpose.